IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3751 of 1997

Between:

THE DEPOT MANAGER, APSRTC
MUSHIRABAD, HYDERABAD.

..... PETITIONER

AND

1 SRI ABDUL GAFFAR KHAN S/O ABDUL SATTAR KHAN
R/O HC.QR.NO. 92 YOUSUFGUDA,POLICE LINE
HYDERABAD
2 THE PRESIDING OFFICER,LABOUR COURT- I
A.P, HYDERABAD

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the order in M.P. No. 11/92,dt; 9/2/96 on the file of the second respondent and declare the same as arbitrary and illegal by way of issue of writ of certiorari or any other appropriate writ or order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner : MR.V.T.M.PRASAD (S.C.FOR APSRTC)

Counsel for the Respondent No.1 : MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.2: None appeared

The Court made the following:

ORAL ORDER:

This writ petition is filed by the A.P. State Road Transport Corporation (hereinafter referred to as 'the Corporation') aggrieved by the order passed by the Labour Court-I, Hyderabad in M.P.No.11 of 1992, dated 9.2.1996. The respondent-workman filed the above petition under Sec.33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') seeking a direction to the Corporation to pay a sum of Rs.10,000/- to him together with interest and costs.

2. According to the respondent-workman, he worked as a Driver in the petitioner-corporation. When the corporation terminated his serves, he moved the Labour Court by filing I.D.No.187 of 1986 in which the order of removal was confirmed. But, however, the respondent filed W.P.No. 523 of 1988 before this Court, and this Court disposed of the same on 5.4.1992, directing the Corporation to reinstate the workman as a fresh candidate within one month from the said Judgment. It is further stated that the respondent-workman sent his joining report on 18.5.1992 along with a copy of the Judgment by post. As the Corporation did not respond, he issued a legal notice dated 21.9.1992, and as there was no reply for the said notice, the workman filed the present petition under Sec.33-C (2) of the Act before the Labour Court, claiming salary for five months together with interest.

The said claim was contested by the Corporation by filing a counter before the Labour Court.

The Labour Court, after considering the material on record, passed the order on the ground that the Corporation failed to comply the order of this Court passed in W.P.No.523 of 1988, and therefore, the respondent-workman is entitled for salary. Accordingly, the Labour Court passed the impugned order directing the Corporation to pay the amount, as claimed by the workman.

Aggrieved by that, the Corporation has come up with the present writ petition.

3. It is stated in the affidavit that though the 1st respondent is entitled for reinstatement in pursuance of the orders of this Court in W.P.No. 523 of 1988, dated 15.4.1992, but the respondent did not present himself physically before the concerned authority to get the order of reinstatement immediately after the order of this Court. It is stated that the 1st respondent sent a letter to the petitioner Corporation enclosing the Judgment of this Court on 18.5.1992, which was received by the Corporation on 20.05.1992, but the 1st respondent was not physically

available in India. The said notice was issued with an intention to claim the benefit of salary. It is stated that as per the directions of the Regional Manager, the Divisional Manager issued posting orders on 28.12.1992 and the said orders with a copy of the letter dated 28.12.1992 was sent to the 1st respondent's residential address available in the records. The same was returned un-delivered on 8.1.1993, and, therefore, again on 23.4.1993 the Divisional Manager passed orders directing the 1st respondent to report to duty within seven days from the date of the receipt of the said letter. In that it was also made clear that failing which the reinstatement order will be cancelled. A copy of the order, dated 23.4.1993 was also sent to the Depot Manager, Musheerabad, and from the Depot Manager, Musheerabad, the Divisional Manager came to know that the

1st respondent was abroad and accordingly a fresh postal address was furnished. Accordingly, the Regional Manager again sent a letter dated 29.4.1993 to the 1st respondent to report to the Divisional Manager, Charminar to get posting orders of reinstatement; failing which the reinstatement order would be cancelled. Though, the said letter dated 29.4.1993 was acknowledged by the respondent on 4.5.1993, but he did not respond and report to duty. Therefore, the Regional Manager issued proceedings dated 5.6.1993 cancelling the reinstatement order. The said proceedings were also acknowledged by the Respondent No.1 on 29.6.1993. Thereafter, the Respondent No.1 got issued a legal notice dated 7.7.1993. But the Respondent No.1 did not present himself physically before the officer to receive the orders of reinstatement, but mischievously got filed the petition in M.P.No.11 of 1992 before the Labour Court seeking salary for a period of five months up to 20.11.1992.

4. The learned Standing Counsel for the Corporation, therefore, contended that when the 1st respondent was not physically present in India to get an order of reinstatement and even the orders of reinstatement sent to his address returned un-served because of his absence at the said address, he is not entitled for any salary, as admittedly, he did not render any service to the Corporation. It is also stated that the failure to get reinstatement is due to the act of the respondent-workman and there is no fault on the part of the Corporation. Therefore, there is no justification for seeking payment of salary for a period of five months. It is also stated that the Respondent No.1 filed Writ Petition for getting an order of reinstatement only in the year 1996. Obviously, the Respondent No.1 might not have been in the country till 1996. Therefore, the Respondent No.1 is not entitled for the benefit of the payment of

salary. According to the learned counsel, the Labour Court failed to consider these aspects as to the non-availability of the 1st respondent in India. In fact, even in the present Writ Petition also the 1st respondent did not file any counter disputing the facts stated in the affidavit filed in support of the Writ Petition as to the non-availability of the Respondent No.1 in India. Therefore, the learned counsel sought for setting aside the order of the Tribunal.

5. The learned counsel for the Respondent No.1 – workman, on the other hand, supported the order of the Labour Court. According to the learned counsel when once an order of reinstatement was passed by this Court modifying the order passed by the Labour Court passed in I.D.No.187 of 1986, it is the duty of the Corporation to reinstate the workman. When once the Corporation failed to reinstate the petitioner within one month as stipulated in the Judgment of this Court, the respondent-workman is entitled for the salary for the period for which he was denied the benefit of service as well as the remuneration. Therefore, it is contended that the Labour Court has rightly passed orders awarding the salary, as claimed by the Respondent No.1. The learned counsel also relied upon a Judgment of the Apex Court in the case of ***APSRTC v. B. Vikram Reddy;*** *a* decision of Gujarat High Court in the case of ***Union of India & Ors. V. Dharamsi F.Zala,*** a decision of a Division Bench of this Court in the case of ***J. Rama Rao v. A.P.S.R.T.C., Hyderabad***, and a decision of a learned single Judge of this Court in the case of ***Y.G. Krishna v. Addl. Industrial Tribunal-cum-Addl.Labour Court, Hyderabad .***

6. From the above rival contentions, the issue to be considered is whether the Labour Court was justified in passing orders directing the Corporation to pay a sum of Rs.10,000/- towards salary for a period of five months from 20th June 1992 to 20th November 1992.

7. It is not in dispute that the 1st respondent, who was working as a driver, was removed from service. Thereafter, he raised an Industrial Dispute in I.D.No. 187 of 1986. The Labour Court upheld the order of removal by its Award dated 5.10.1987. The said award was further assailed before this Court in W.P.No.523 of 1988, which was disposed on 5.4.1992, modifying the award passed by the Labour Court, and directing the Corporation to reinstate the petitioner into service as a fresh candidate within one month from the date of receipt of the Judgment. According to the workman, the copy of the Judgment along with the joining report was sent to the

Corporation on 18.5.1992, which was received by the Corporation on 20.5.1992. According to the 1st respondent, the Corporation ought to have reinstated him within a month from the date of receipt of the Judgment of the High Court, and as he was not reinstated, he claimed the salary for a period of five months up to November 1992, at the rate of Rs.2,000/- per month. On the other hand, it is stated by the Corporation by filing a counter that an order of appointment was sought to be served on the Respondent No.1, but the communication sent was returned un-served. Thereafter, the Corporation came to know that the petitioner was not available in India as he was in abroad, and thereafter served the order of reinstatement with a direction to the 1st respondent to report before the Divisional Manager, Charminar division. Though the said communication was acknowledged by the 1st respondent on 29.6.1993, there was no response. Thereafter, another communication was also sent in reply to the legal notice issued by the Respondent No.1. The said communication sent by the Corporation was also acknowledged on 26.7.1993. But the Respondent No.1 did not appear physically before the officers of the Corporation. Therefore, there were no laches on the part of the Corporation in ordering reinstatement, but the Respondent No.1 was not available physically to join the duty in the Corporation. Though this stand of the Corporation has been stated clearly before the Labour Court as well as in the present affidavit, those facts were not disputed even by filing a counter by the Respondent No.1-workman. In fact, the conduct of the Respondent No.1 also shows that he did not even sought for reinstatement till 1996 and it is also not known whether even after the direction obtained in the above mentioned Writ Petition, the Respondent No.1 joined the Corporation or not. Irrespective of the other aspects, the contention of the Corporation is that as the Respondent No.1 was not available physically during the relevant period in India, he is not entitled to claim any monetary benefit for that period.

8. Though the counsel for the workman relied upon various decisions referred to earlier, which, in fact, support the contention of the 1st respondent-workman, but, however, the ratio laid down in those Judgments cannot be extended to the facts of the present case, as admittedly, the stand of the Corporation is that the Respondent No.1 was not available in India as he was in abroad at the relevant point of time.

9. In view of the above, the Respondent No.1 is not entitled to claim any remuneration, as reinstatement would not be given in view of his non-availability in India.

10. Therefore, the impugned order of the Labour Court is set aside and the Writ Petition is allowed.

S. ANANDA REDDY, J.

Dt. 07.10.2004

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ORAL ORDER

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